

**AGENDA ITEM SUMMARY**

**DATE:** 10-7-2013      **DEPARTMENT:** CDD      **DEPT. HEAD SIGNATURE:** MA

---

**SUBJECT:** Proceed with 2<sup>nd</sup> Reading of Ordinance No. 1136, amending Hailey's Zoning Ordinance, No. 532, by amending Section 3.6 to require reconsideration for alleged failure to identify compliance or noncompliance with express approval standards or explain compliance or noncompliance with decision criteria, as required by the recent amendments to Idaho Code §67-6535.

---

**AUTHORITY:**  (IF APPLICABLE)       IAR \_\_\_\_\_       City Ordinance/Code Zoning Ordinance No. 532

---

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

**Procedural History**

- Planning and Zoning Public Hearing: August 12
- City Council Public Hearing: September 16, 2013
- First Reading: September 16, 2013
- Second Reading: October 7, 2013
- Third Reading: October 21, 2013

**Proposal**

Amend section 3.6 of the Zoning Ordinance, Ordinance No. 532, to require reconsideration for alleged failure to identify compliance or noncompliance with express approval standards or explain compliance or noncompliance with decision criteria, consistent with the recent amendments to Idaho Code §67-6535.

**Department Comments**

This ordinance ensures that the Zoning Ordinance is in compliance Idaho Code §67-6535, which amended the procedure for reconsideration of a Planning and Zoning Commission or City Council decision. Under the amended law, an applicant or affected person seeking judicial review of compliance with Idaho Code §67-6535 must first seek reconsideration of the final decision of the governing board within fourteen (14) days of the decision. This would mean that if an applicant or affected person does not seek reconsideration within 14 days of the final decision, they waive their right to reconsideration. Reconsideration is a necessary process for appealing a decision to a higher governing board.

**Planning and Zoning Commission Recommendation**

The Hailey Planning and Zoning Commission held a public hearing on the proposed ordinance on August 12, 2013. After brief consideration, the Commission voted unanimously to recommend approval of the amendment.

---

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:**

None

---

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)**

<input checked="" type="checkbox"/> City Administrator	<input type="checkbox"/> City Clerk	<input type="checkbox"/> Engineer
<input checked="" type="checkbox"/> City Attorney	<input checked="" type="checkbox"/> Building	<input type="checkbox"/> Fire Dept.

- |                                     |                  |                          |                    |
|-------------------------------------|------------------|--------------------------|--------------------|
| <input type="checkbox"/>            | Library          | <input type="checkbox"/> | Benefits Committee |
| <input type="checkbox"/>            | Mayor            | <input type="checkbox"/> | Streets            |
| <input checked="" type="checkbox"/> | Planning         | <input type="checkbox"/> | Treasurer          |
| <input type="checkbox"/>            | Police           | <input type="checkbox"/> | Sustainability     |
| <input type="checkbox"/>            | Public Works,    | <input type="checkbox"/> | _____              |
| <input type="checkbox"/>            | Parks            | <input type="checkbox"/> | _____              |
| <input checked="" type="checkbox"/> | P & Z Commission |                          |                    |

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Proceed with 2<sup>nd</sup> Reading of Ordinance No. 1136.

**ACTION OF THE CITY COUNCIL:**

Date : 10/7 - 2<sup>nd</sup> Reading  
 City Clerk \_\_\_\_\_

**FOLLOW-UP:**

11/4/13 - 3<sup>rd</sup> Reading & summary

\*Ord./Res./Agrmt./Order Originals: Record \*Additional/Exceptional Originals to:

Copies (all info.): \_\_\_\_\_  
 Instrument # \_\_\_\_\_

Copies (AIS only)

## STAFF REPORT

**TO:** Hailey City Council

**FROM:** Micah Austin, Community Development Director

**RE:** Public Hearing and consideration of a City of Hailey initiated text amendment, amending Hailey's Zoning Ordinance, Ordinance No. 532, by amending Section 3.6 to require reconsideration for alleged failure to identify compliance or noncompliance with express approval standards or explain compliance or noncompliance with decision criteria, as required by the recent amendments to Idaho Code §67-6535.

**HEARING:** Planning and Zoning: August 12, 2013  
City Council: September 16, 2013

---

### Notice

#### Planning and Zoning

- Notice for the public hearing was published in the Idaho Mountain Express on June 24<sup>th</sup>, 2013 and mailed to public agencies and area media on June 24<sup>th</sup>, 2013.

#### City Council

- Notice for the public hearing was published in the Idaho Mountain Express on August 14<sup>th</sup>, 2013 and mailed to public agencies and area media on August 14<sup>th</sup>, 2013.

### Proposal

Amending Section 3.6 of the Zoning Ordinance, Ordinance No. 532, to require reconsideration for alleged failure to identify compliance or noncompliance with express approval standards or explain compliance or noncompliance with decision criteria, consistent with the recent amendments to Idaho Code §67-6535.

### Department Comments

This ordinance ensures that the Zoning Ordinance is in compliance Idaho Code §67-6535, which amended the procedure for reconsideration of a Planning and Zoning Commission or City Council decision. Under the amended law, an applicant or affected person seeking judicial review of compliance with Idaho Code §67-6535 must first seek reconsideration of the final decision of the governing board within fourteen (14) days of the decision. This would mean that if an applicant or affected person does not seek reconsideration within 14 days of the final decision, they waive their right to reconsideration. Reconsideration is a necessary process for appealing a decision to a higher governing board.

### Procedural History

A public hearing on the proposed text amendment was held before the Planning and Zoning Commission on August 12, 2013.

### Planning and Zoning Commission Recommendation

The Hailey Planning and Zoning Commission held a public hearing on the proposed ordinance

on August 12, 2013. After brief consideration, the Commission voted unanimously to recommend approval of the amendment.

**Standards of Evaluation**

**Note:** Staff analysis is in lighter type,  
*Italicized words* are words or phrases added by staff for clarification purposes.

**14.6 When evaluating any proposed amendment under this Article, the Commission and Council shall make findings of fact on the following criteria:**

**a. The proposed amendment is in accordance with the Comprehensive Plan;**  
 The Commission should consider how the proposed amendments relate to the various goals of the Comprehensive Plan (listed below for reference). Section 5, Land Use, Population, and Growth Management, has been addressed as being most applicable to this application as seen below. According to Section 5.8.1 of the Comprehensive Plan, this amendment is in accordance with the Plan.

*Goal 5.8.1: To develop clear land use and development procedures that protect the public welfare for all development.*

Comp Plan Goals (2010)	
1.1	Preserve, protect and restore natural resources including waterways, floodplains, wetlands, soil, community forest, native vegetation, green space and wildlife habitat and migration corridors for the benefit of the City and its residents.
1.2	Efficiently use and conserve resources.
1.3	Promote renewable energy production
1.4	Promote energy conservation
1.5	Promote air quality protection
2.1	Reduce the potential threat to loss of life, limb or property and minimize public expenditures due to natural and man-made hazards.
3.1	Assure the protection and preservation of Special Sites, Areas and Features to maintain a strong community identity for future generations
3.2	Protect the residential character of the original Townsite.
4.1	Create and maintain an interconnected system of parks, recreational facilities, trails, green spaces and natural lands in order to provide diverse recreation opportunities for Hailey residents within ¼ mile to ½ mile of the greatest number of residents.
5.1	Retain a compact City comprised a central downtown with surrounding diverse neighborhoods, areas and characteristics as depicted in the Land Use Map:
a.	Main Street Corridor – area of high density commercial, mixed use and residential development.

b.	Downtown - the historic commercial center containing the greatest concentration of commercial, cultural and civic activity. Downtown is the priority area for encouraging higher density commercial and mixed use (commercial and residential) development.
c.	Community Activity Areas – located at the north and south ends of the Main Street Corridor. High density residential is encouraged. Commercial and mixed use (commercial and residential) development is appropriate, but should be subordinate and secondary to the infill of Downtown.
d.	High Density Residential – high density residential infill is encouraged in the area along Main Street and River Street between Downtown and the north and south ends of Main Street.
e.	Residential Buffer – medium density residential, providing a buffer between lower density residential neighborhoods to the east and west and the Main Street District.
f.	Traditional Residential – Density varies depending on the qualities of different neighborhoods, generally density is higher within a ¼ mile of Downtown, Community Activity Areas or Neighborhood Service Centers and connected by transit service.
g.	Neighborhood Service Centers – Small commercial areas serving residents within walking distance (¼ to ½ mile) where commercial use is subordinate to residential uses and to Downtown or Community Activity Areas.
h.	Light Industrial – Areas containing uses important to a variety of business sectors that focus on the production of products and services that are less compatible with, and do not compete with, uses in Downtown and the Community Activity Areas.
i.	Airport Site Redevelopment – a diversity and integration of uses and community assets that complement and support Downtown and are connected within and to existing neighborhoods.
j.	Community Gateways – areas where one has a sense of arrival or sense of being within a part of town distinguished from others providing opportunities for special design considerations.

5.2	Maintain Downtown as the area containing the greatest concentration of commercial, cultural and civic activity and as the priority area for encouraging higher density commercial and mixed use (commercial and residential) development.
5.3	Continue cooperation with the Blaine County and the Friedman Memorial Airport Authority in regional planning efforts to optimally relocate the airport and plan for the long term redevelopment of the site within the city limits to ensure that changes in land use are beneficial to the community of Hailey.
5.4	Protect open space within and surrounding Hailey, including visible ridgelines, undeveloped hillsides and agricultural areas which help define the unique character of Hailey.
5.5	Lessen dependency on the automobile.
5.6	Manage and accommodate population growth by infill development and, when appropriate, minimal expansion by annexation and/or density increases.
5.7	Encourage development at the densities allowed in the Zoning Code.
6.1	Encourage a diversity of economic development opportunities within Hailey
6.2	Encourage abundant, competitive and career-oriented opportunities for young workers.
7.1	Encourage a variety of projects and programs that meet the needs generated by

various segments of the population, especially the needs of those who risk suffering effects of discrimination or are socially or economically disadvantaged.
7.2 Encourage projects and programs that seek to provide opportunities for cultural, cross-cultural and educational enrichment.
8.1 Encourage development that provides opportunities for home ownership and rental homes for individuals and families of all socio-economic levels.
9.1 Plan for the long-term utilities, service and facility needs of the City while minimizing impacts to the greatest extent possible.
10.1. Create and maintain a pedestrian and bicycle-friendly community that provides a safe, convenient and efficient multi-modal transportation system for all Hailey residents.
11.1 Establish a built environment that maintains a human scale, retains interest, aesthetics, encourages various levels of interaction among all members of the community, and enhances the character of different neighborhoods.
12.1 Evaluate whether proposed regulatory or administrative actions may result in an unconstitutional taking of private property.
13.1 Encourage and facilitate the development of school facilities that are planned consistently with the city's other land use policies.
13.2 Ensure the provision of safe, adequate, convenient multi-modal transportation access to all existing and future school sites.

**b. Essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;**

Not applicable

**c. The proposed uses are compatible with the surrounding area; and**

Not applicable

**d. The proposed amendment will promote the public health, safety and general welfare.**  
 The proposed amendment is intended to give applicants a clear understanding of the law.

**Motion Language**

**Approval:**

**Council**

Motion to approve the amendments to Hailey's Zoning Ordinance, Ordinance No. 532, by amending Section 3.6 to require reconsideration for alleged failure to identify compliance or noncompliance with express approval standards or explain compliance or noncompliance with decision criteria, as required by the recent amendments to Idaho Code §67-6535 finding that the amendments are in accordance with the Comprehensive Plan, that essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services, that the proposed uses are compatible with the surrounding area, and that the proposed amendment will promote the public health, safety and general welfare and adopt Ordinance \_\_\_\_ and authorize the mayor to conduct the first reading by title only.

**Denial:**

**Council**

Motion to deny proposed amendments to Hailey's Zoning Ordinance, Ordinance No. 532, by amending Section 3.6, finding that \_\_\_\_\_ [the Council should cite which standards are not met and provided the reason why each identified standard is not met].

**Continuation:**

Motion to continue the public hearing upon the proposed amendments to Hailey's Zoning Ordinance, Ordinance No. 532, by amending Section 3.6, to \_\_\_\_\_ [the Commission should specify a date].

**Table:**

Motion to table the proposed amendments to Hailey's Zoning Ordinance, Ordinance No. 532, by amending Section 3.6, to a later date: \_\_\_\_\_.

HAILEY ORDINANCE NO. 1136

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING SECTION 3.6 TO REQUIRE RECONSIDERATION FOR ALLEGED FAILURE TO IDENTIFY COMPLIANCE OR NONCOMPLIANCE WITH EXPRESS APPROVAL STANDARDS OR EXPLAIN COMPLIANCE OR NONCOMPLIANCE WITH DECISION CRITERIA; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, Idaho Code § 67-6535 has been amended to provide that a failure by a municipality to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of the same, on appeal;

WHEREAS, Idaho Code § 67-6535 has been amended to provide that an applicant or affected person seeking judicial review of compliance with Idaho Code § 67-6535 must first seek reconsideration of the final decision within fourteen (14) days;

WHEREAS, the Hailey City Council has found that the following amendments to the Hailey Zoning Ordinance will generally conform to the Hailey Comprehensive Plan;

WHEREAS, the amendments will not create excessive additional requirements at public cost for public facilities and services; and

WHEREAS, the amendment will be in accordance with the public health, safety and general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

**Section 1.** Section 3.6 of the Hailey Zoning Ordinance No. 532 is hereby amended by addition of the underlined language and by deletion of the stricken language, as follows:

3.6 APPEALS.

An applicant or affected person party aggrieved by may appeal a final decision of the Administrator, Hearing Examiner or Commission ~~may appeal in writing any final decision by filing a written~~ Notice of Appeal with the Hailey City Clerk within fifteen (15) days from the date of the decision. An appeal of a final decision by the Administrator or the Hearing Examiner shall be heard by the Commission. An appeal of a final decision by the Commission or an appeal of a decision heard on appeal by the Commission shall be heard by the Council. Any appeal shall not be a de novo hearing and shall be based solely on the record before the

Administrator, Hearing Examiner or Commission, as the case may be. The record shall consist of all the documents presented to Administrator, Hearing Examiner or Commission (such as the application, supporting documents, letters and studies), the minutes of any meeting and the findings of fact and conclusions of law. The Appellant may also have a verbatim transcript of the hearing before the Hearing Examiner or Commission prepared to be submitted on appeal. The cost of the preparation of the record and transcript shall be paid by the Appellant. The appeal shall specifically state the decision appealed, the issues to be raised on appeal and reasons for the appeal. If no appeal is filed within the fifteen (15) day period, the decision shall be deemed final.

At the time of the filing of the Notice of Appeal, the Appellant shall pay the costs of preparing the transcript and record estimated by the Administrator and the fee for filing an appeal, as established by ordinance. The Administrator will prepare one original transcript (if applicable) and record and 8 copies of the transcript (if applicable) and record. If the costs of preparing the transcript and record exceed the estimated costs paid by the Appellant, the Appellant shall pay the difference before a hearing on the appeal is heard.

Once the transcript and record have been prepared, the Administrator shall schedule a hearing on appeal with the Commission or Council for the next available hearing date. If the Appellant desires to file a brief in support of the appeal, the Appellant shall file an original brief and 8 copies of the brief with the Administrator five business days before the scheduled appeal hearing. If the brief is not timely filed, the Commission and the Council may elect not to consider the brief. The Appellant and Appellant's representative and a City representative shall only be entitled to present argument before the Commission or Council.

Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria or standards shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of the same, on appeal. An applicant or affected person who seeks judicial review of a decision by the Administrator, Hearing Examiner, Commission or Council must first seek reconsideration of the final decision within fourteen (14) days. A request for reconsideration shall be made to the person or body who has the authority to make a final decision but does not have to be made to a person or body who makes a recommendation. A request for reconsideration must allege and identify specific deficiencies in the decision. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of an appeal or judicial review unless the process required herein has been followed. The time to file an appeal or to seek judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

**Section 2.** Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**Section 3.** All Ordinances or parts thereof in conflict herewith are hereby repealed and rescinded.

**Section 4.** This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

**PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS \_\_\_ DAY OF \_\_\_\_\_, 2013.**

\_\_\_\_\_  
Fritz X. Haemmerle, Mayor

Attest:

\_\_\_\_\_  
Mary Cone, City Clerk

AGENDA ITEM SUMMARY

DATE: 11/4/2013

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: \_\_\_\_\_

SUBJECT:

Summary of Hailey Ordinance No. 1136 (Zoning Ordinance Reconsideration Process Amendment)

AUTHORITY:  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am enclosing a summary of Hailey Ordinance No. 1136 which amended the zoning appeal process to establish a reconsideration procedure consistent with a new Idaho law.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS Caselle # \_\_\_\_\_  
Budget Line Item # \_\_\_\_\_ YTD Line Item Balance \$ \_\_\_\_\_  
Estimated Hours Spent to Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_  
Staff Contact: \_\_\_\_\_ Phone # \_\_\_\_\_  
Comments: \_\_\_\_\_

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)  
\_\_\_\_ City Attorney      \_\_\_\_ Clerk / Finance Director      \_\_\_\_ Engineer      \_\_\_\_ Building  
\_\_\_\_ Library      \_\_\_\_ Planning      \_\_\_\_ Fire Dept.      \_\_\_\_\_  
\_\_\_\_ Safety Committee      \_\_\_\_ P & Z Commission      \_\_\_\_ Police      \_\_\_\_\_  
\_\_\_\_ Streets      \_\_\_\_ Public Works, Parks      \_\_\_\_ Mayor      \_\_\_\_\_

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Make a motion to approve the summary of Hailey Ordinance No. 1136.

FOLLOW-UP REMARKS:

## SUMMARY OF HAILEY ORDINANCE NO. 1136

The following is a summary of the principal provisions of Ordinance No. 1136 of the City of Hailey, Idaho, duly passed and adopted November 4, 2013, by the City Council and Mayor of the City of Hailey:

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING SECTION 3.6 TO REQUIRE RECONSIDERATION FOR ALLEGED FAILURE TO IDENTIFY COMPLIANCE OR NONCOMPLIANCE WITH EXPRESS APPROVAL STANDARDS OR EXPLAIN COMPLIANCE OR NONCOMPLIANCE WITH DECISION CRITERIA; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

Hailey Ordinance No. 1136 amends Hailey's Zoning Ordinance No. 532, as follows:

**Section 1** amends Section 3.6 of the Hailey Zoning Ordinance No. 532 to provide that a) failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria or standards shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of the same, on appeal, b) an applicant or affected person who seeks judicial review of a final decision by the Administrator, Hearing Examiner, Commission or Council must first seek reconsideration of the decision within fourteen (14) days to the person or body with authority to make a final decision, c) a request for reconsideration must allege and identify specific deficiencies in the decision, d) upon reconsideration, the decision may be affirmed, reversed or modified by a written decision within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied, and e) the time to file an appeal or to seek judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

**Section 2** provides for a severability clause.

**Section 3** provides for a repealer clause.

**Section 4** provides for an effective date of the ordinance.

The full text of Ordinance No. 1136 is available at Hailey City Hall at 115 South Main Street, Suite H, Hailey, Idaho 83333 and will be provided to any citizen upon request during regular business hours.

### CERTIFICATION OF CITY ATTORNEY

I, the undersigned Attorney at Law, as attorney for the City of Hailey, Idaho, hereby certify that I have read the foregoing summary of Ordinance No. 1136 of the City of Hailey, that I have compared it to the full text of Ordinance No. 1136, and that in my opinion, the above

summary is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated this 4<sup>th</sup> day of November, 2013.

---

Ned Williamson, Hailey City Attorney

Publish: Idaho Mountain Express, November \_\_, 2013



**AGENDA ITEM SUMMARY**

**DATE:** 10-7-2013      **DEPARTMENT:** CDD      **DEPT. HEAD SIGNATURE:** MA

---

**SUBJECT:** Proceed with 2<sup>nd</sup> reading of Ordinance 1137 amending Hailey's Subdivision Ordinance, No. 831, by amending section 2.6 to require reconsideration for alleged failure to identify compliance or noncompliance with express approval standards or explain compliance or noncompliance with decision criteria, as required by the recent amendments to Idaho Code §67-6535.

---

**AUTHORITY:**        IAR \_\_\_\_\_       City Ordinance/Code: Subdivision Ordinance No. 821 (IFAPPLICABLE)

---

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

**Procedural History**

- Planning and Zoning Public Hearing: August 12
- City Council Public Hearing: September 16, 2013
- First Reading: September 16, 2013
- Second Reading: October 7, 2013
- Third Reading: October 21, 2013

**Proposal**

Amend section 2.6 to require reconsideration for alleged failure to identify compliance or noncompliance with express approval standards or explain compliance or noncompliance with decision criteria, as required by the recent amendments to Idaho Code §67-6535.

**Department Comments**

This ordinance ensures that the Subdivision Ordinance is in compliance Idaho Code §67-6535, which amended the procedure for reconsideration of a Planning and Zoning Commission or City Council decision. Under the amended law, an applicant or affected person seeking judicial review of compliance with Idaho Code §67-6535 must first seek reconsideration of the final decision of the governing board within fourteen (14) days of the decision. This would mean that if an applicant or affected person does not seek reconsideration within 14 days of the final decision, they waive their right to reconsideration. Reconsideration is a necessary process for appealing a decision to a higher governing board.

**Planning and Zoning Commission Recommendation**

The Hailey Planning and Zoning Commission held a public hearing on the proposed ordinance on August 12, 2013. After brief consideration, the Commission voted unanimously to recommend approval of the amendment.

---

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:**

None

---

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IFAPPLICABLE)**

<input checked="" type="checkbox"/> City Administrator	<input type="checkbox"/> Engineer	<input type="checkbox"/> Library
<input checked="" type="checkbox"/> City Attorney	<input type="checkbox"/> Fire Dept.	<input type="checkbox"/> Mayor
<input type="checkbox"/> City Clerk		<input checked="" type="checkbox"/> Planning
<input checked="" type="checkbox"/> Building		<input type="checkbox"/> Police

Public Works,  
Parks  
 P & Z Commission

Benefits Committee.  
 Streets  
 Treasurer  
 Sustainability  
\_\_\_\_\_  
\_\_\_\_\_

---

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Proceed with 2<sup>nd</sup> reading of Ordinance 1137.

---

**ACTION OF THE CITY COUNCIL:**

Date : 10/7 - 2<sup>nd</sup> Reading  
City Clerk 11/4/13 - 3<sup>rd</sup> Reading & Summary

---

**FOLLOW-UP:**

\*Ord./Res./Agrmt./Order Originals: Record \*Additional/Exceptional Originals to:

Copies (all info.): \_\_\_\_\_

Copies (AIS only)

Instrument # \_\_\_\_\_

## STAFF REPORT

**TO:** Hailey City Council

**FROM:** Micah Austin, Community Development Director

**RE:** Public Hearing and consideration of a City of Hailey initiated text amendment, amending Hailey's Subdivision Ordinance, Ordinance No. 821, by amending section 2.6 to require reconsideration for alleged failure to identify compliance or noncompliance with express approval standards or explain compliance or noncompliance with decision criteria, as required by the recent amendments to Idaho Code §67-6535.

**HEARING:** Planning and Zoning: August 12, 2013  
City Council: September 16, 2013

---

### Notice

#### Planning and Zoning

- Notice for the public hearing was published in the Idaho Mountain Express on June 24<sup>th</sup>, 2013 and mailed to public agencies and area media on June 24<sup>th</sup>, 2013.

#### City Council

- Notice for the public hearing was published in the Idaho Mountain Express on August 14<sup>th</sup>, 2013 and mailed to public agencies and area media on August 14<sup>th</sup>, 2013.

### Proposal

Amend Hailey's Subdivision Ordinance, Ordinance No. 821, by amending section 2.6 to require reconsideration for alleged failure to identify compliance or noncompliance with express approval standards or explain compliance or noncompliance with decision criteria, consistent with the recent amendments to Idaho Code §67-6535.

### Department Comments

This ordinance ensures that the Subdivision Ordinance is in compliance Idaho Code §67-6535, which amended the procedure for reconsideration of a Planning and Zoning Commission or City Council decision. Under the amended law, an applicant or affected person seeking judicial review of compliance with Idaho Code §67-6535 must first seek reconsideration of the final decision of the governing board within fourteen (14) days of the decision. This would mean that if an applicant or affected person does not seek reconsideration within 14 days of the final decision, they waive their right to reconsideration. Reconsideration is a necessary process for appealing a decision to a higher governing board.

### Procedural History

A public hearing on the proposed text amendment was held before the Planning and Zoning Commission on August 12, 2013.

### Planning and Zoning Commission Recommendation

The Hailey Planning and Zoning Commission held a public hearing on the proposed ordinance on August 12, 2013. After brief consideration, the Commission voted unanimously to recommend approval of the amendment.

**Standards of Evaluation**

**Note:** Staff analysis is in lighter type,  
*Italicized words* are words or phrases added by staff for clarification purposes.

**14.6 When evaluating any proposed amendment under this Article, the Commission and Council shall make findings of fact on the following criteria:**

**a. The proposed amendment is in accordance with the Comprehensive Plan;**  
 The Commission should consider how the proposed amendments relate to the various goals of the Comprehensive Plan (listed below for reference). Section 5, Land Use, Population, and Growth Management, has been addressed as being most applicable to this application as seen below. According to Section 5.8.1 of the Comprehensive Plan, this amendment is in accordance with the Plan.

*Goal 5.8.1: To develop clear land use and development procedures that protect the public welfare for all development.*

Comp Plan Goals (2010)	
1.1	Preserve, protect and restore natural resources including waterways, floodplains, wetlands, soil, community forest, native vegetation, green space and wildlife habitat and migration corridors for the benefit of the City and its residents.
1.2	Efficiently use and conserve resources.
1.3	Promote renewable energy production
1.4	Promote energy conservation
1.5	Promote air quality protection
2.1	Reduce the potential threat to loss of life, limb or property and minimize public expenditures due to natural and man-made hazards.
3.1	Assure the protection and preservation of Special Sites, Areas and Features to maintain a strong community identity for future generations
3.2	Protect the residential character of the original Townsite.
4.1	Create and maintain an interconnected system of parks, recreational facilities, trails, green spaces and natural lands in order to provide diverse recreation opportunities for Hailey residents within ¼ mile to ½ mile of the greatest number of residents.
5.1	Retain a compact City comprised a central downtown with surrounding diverse neighborhoods, areas and characteristics as depicted in the Land Use Map:
a.	Main Street Corridor – area of high density commercial, mixed use and residential

development.
b. Downtown - the historic commercial center containing the greatest concentration of commercial, cultural and civic activity. Downtown is the priority area for encouraging higher density commercial and mixed use (commercial and residential) development.
c. Community Activity Areas – located at the north and south ends of the Main Street Corridor. High density residential is encouraged. Commercial and mixed use (commercial and residential) development is appropriate, but should be subordinate and secondary to the infill of Downtown.
d. High Density Residential – high density residential infill is encouraged in the area along Main Street and River Street between Downtown and the north and south ends of Main Street.
e. Residential Buffer – medium density residential, providing a buffer between lower density residential neighborhoods to the east and west and the Main Street District.
f. Traditional Residential – Density varies depending on the qualities of different neighborhoods, generally density is higher within a ¼ mile of Downtown, Community Activity Areas or Neighborhood Service Centers and connected by transit service.
g. Neighborhood Service Centers – Small commercial areas serving residents within walking distance (¼ to ½ mile) where commercial use is subordinate to residential uses and to Downtown or Community Activity Areas.
h. Light Industrial – Areas containing uses important to a variety of business sectors that focus on the production of products and services that are less compatible with, and do not compete with, uses in Downtown and the Community Activity Areas.
i. Airport Site Redevelopment – a diversity and integration of uses and community assets that complement and support Downtown and are connected within and to existing neighborhoods.
j. Community Gateways – areas where one has a sense of arrival or sense of being within a part of town distinguished from others providing opportunities for special design considerations.

5.2 Maintain Downtown as the area containing the greatest concentration of commercial, cultural and civic activity and as the priority area for encouraging higher density commercial and mixed use (commercial and residential) development.
5.3 Continue cooperation with the Blaine County and the Friedman Memorial Airport Authority in regional planning efforts to optimally relocate the airport and plan for the long term redevelopment of the site within the city limits to ensure that changes in land use are beneficial to the community of Hailey.
5.4 Protect open space within and surrounding Hailey, including visible ridgelines, undeveloped hillsides and agricultural areas which help define the unique character of Hailey.
5.5 Lessen dependency on the automobile.
5.6 Manage and accommodate population growth by infill development and, when appropriate, minimal expansion by annexation and/or density increases.
5.7 Encourage development at the densities allowed in the Zoning Code.
6.1 Encourage a diversity of economic development opportunities within Hailey
6.2 Encourage abundant, competitive and career-oriented opportunities for young workers.

7.1	Encourage a variety of projects and programs that meet the needs generated by various segments of the population, especially the needs of those who risk suffering effects of discrimination or are socially or economically disadvantaged.
7.2	Encourage projects and programs that seek to provide opportunities for cultural, cross-cultural and educational enrichment.
8.1	Encourage development that provides opportunities for home ownership and rental homes for individuals and families of all socio-economic levels.
9.1	Plan for the long-term utilities, service and facility needs of the City while minimizing impacts to the greatest extent possible.
10.1.	Create and maintain a pedestrian and bicycle-friendly community that provides a safe, convenient and efficient multi-modal transportation system for all Hailey residents.
11.1	Establish a built environment that maintains a human scale, retains interest, aesthetics, encourages various levels of interaction among all members of the community, and enhances the character of different neighborhoods.
12.1	Evaluate whether proposed regulatory or administrative actions may result in an unconstitutional taking of private property.
13.1	Encourage and facilitate the development of school facilities that are planned consistently with the city's other land use policies.
13.2	Ensure the provision of safe, adequate, convenient multi-modal transportation access to all existing and future school sites.

**b. Essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;**

Not applicable

**c. The proposed uses are compatible with the surrounding area; and**

Not applicable

**d. The proposed amendment will promote the public health, safety and general welfare.**

The proposed amendment is intended to give applicants a clear understanding of the law

**Motion Language**

**Approval:**

**Council**

Motion to approve the amendments to Hailey's Subdivision Ordinance, Ordinance No. 821, by amending Section 2.6 to require reconsideration for alleged failure to identify compliance or noncompliance with express approval standards or explain compliance or noncompliance with decision criteria, as required by the recent amendments to Idaho Code §67-6535. finding that the amendments are in accordance with the Comprehensive Plan, that essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services, that the proposed uses are compatible with the surrounding area, and that the proposed amendment will promote the public health, safety and general welfare and adopt Ordinance \_\_\_\_ and authorize the mayor to conduct the first reading by title only.

**Denial:**

**Council**

Motion to deny proposed amendments to Hailey's Subdivision Ordinance, Ordinance No. 821, by amending Section 2.6, finding that \_\_\_\_\_ [the Council should cite which standards are not met and provided the reason why each identified standard is not met].

**Continuation:**

Motion to continue the public hearing upon the proposed amendments to Hailey's Subdivision Ordinance, Ordinance No. 821, by amending Section 2.6, to \_\_\_\_\_ [the Commission should specify a date].

**Table:**

Motion to table the proposed amendments to Hailey's Subdivision Ordinance, Ordinance No. 821, by amending Section 2.6, to a later date: \_\_\_\_\_.

## HAILEY ORDINANCE NO. 1137

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S SUBDIVISION ORDINANCE, ORDINANCE NO. 821, BY AMENDING SECTION 2.6 TO REQUIRE RECONSIDERATION FOR ALLEGED FAILURE TO IDENTIFY COMPLIANCE OR NONCOMPLIANCE WITH EXPRESS APPROVAL STANDARDS OR EXPLAIN COMPLIANCE OR NONCOMPLIANCE WITH DECISION CRITERIA; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, Idaho Code § 67-6522 has been amended to provide that a failure by a municipality to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of the same, on appeal;

WHEREAS, Idaho Code § 67-6522 has been amended to provide that an applicant or affected person seeking judicial review of compliance with Idaho Code § 67-6522 must first seek reconsideration of the final decision within fourteen (14) days;

WHEREAS, the Hailey City Council has found that the following amendments to the Hailey Zoning Ordinance will generally conform to the Hailey Comprehensive Plan;

WHEREAS, the amendments will not create excessive additional requirements at public cost for public facilities and services; and

WHEREAS, the amendment will be in accordance with the public health, safety and general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

**Section 1.** Section 2.6 of the Hailey Zoning Ordinance No. 821 is hereby amended by addition of the underlined language and by deletion of the stricken language, as follows:

### 2.6 APPEALS.

An applicant or affected person party aggrieved by ~~may appeal~~ a final decision of the Administrator, Hearing Examiner or Commission ~~may appeal in writing any final decision~~ by filing a written Notice of Appeal with the Hailey City Clerk within fifteen (15) days from the date of the decision. An appeal of a final decision by the Administrator or the Hearing Examiner shall be heard by the Commission. An appeal of a final decision by the Commission or an appeal of a decision heard on appeal by the Commission shall be heard by the Council. Any appeal shall not be a de novo hearing and shall be based solely on the record before the

Administrator, Hearing Examiner or Commission, as the case may be. The record shall consist of all the documents presented to Administrator, Hearing Examiner or Commission (such as the application, supporting documents, letters and studies), the minutes of any meeting and the findings of fact and conclusions of law. The Appellant may also have a verbatim transcript of the hearing before the Hearing Examiner or Commission prepared to be submitted on appeal. The cost of the preparation of the record and transcript shall be paid by the Appellant. The appeal shall specifically state the decision appealed, the issues to be raised on appeal and reasons for the appeal. If no appeal is filed within the fifteen (15) day period, the decision shall be deemed final.

At the time of the filing of the Notice of Appeal, the Appellant shall pay the costs of preparing the transcript and record estimated by the Administrator and the fee for filing an appeal, as established by ordinance. The Administrator will prepare one original transcript (if applicable) and record and 8 copies of the transcript (if applicable) and record. If the costs of preparing the transcript and record exceed the estimated costs paid by the Appellant, the Appellant shall pay the difference before a hearing on the appeal is heard.

Once the transcript and record have been prepared, the Administrator shall schedule a hearing on appeal with the Commission or Council for the next available hearing date. If the Appellant desires to file a brief in support of the appeal, the Appellant shall file an original brief and 8 copies of the brief with the Administrator five business days before the scheduled appeal hearing. If the brief is not timely filed, the Commission and the Council may elect not to consider the brief. The Appellant and Appellant's representative and a City representative shall only be entitled to present argument before the Commission or Council.

Any aggrieved party is entitled to judicial review of any preliminary plat or final plat decision by the Council in accordance with the provisions of Idaho Code §§ 67-5201, *et seq.*

Failure to file an appeal of a preliminary plat decision will constitute a waiver of all issues which could be reviewed during an appeal of a preliminary plat decision.

Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria or standards shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of the same, on appeal. An applicant or affected person who seeks judicial review of a decision by the Administrator, Hearing Examiner, Commission or Council must first seek reconsideration of the final decision within fourteen (14) days. A request for reconsideration shall be made to the person or body who has the authority to make a final decision but does not have to be made to a person or body who makes a recommendation. A request for reconsideration must allege and identify specific deficiencies in the decision. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of an appeal or judicial review unless the process required herein has been followed. The time to file an appeal or to seek judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

**Section 2.** Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**Section 3.** All Ordinances or parts thereof in conflict herewith are hereby repealed and rescinded.

**Section 4.** This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

**PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED  
BY THE MAYOR THIS \_\_ DAY OF \_\_\_\_\_, 2013.**

\_\_\_\_\_  
Fritz X. Haemmerle, Mayor

Attest:

\_\_\_\_\_  
Mary Cone, City Clerk

AGENDA ITEM SUMMARY

DATE: 11/4/2013

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: \_\_\_\_\_

SUBJECT:

Summary of Hailey Ordinance No. 1137 (Zoning Subdivision Reconsideration Process Amendment)

AUTHORITY:  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am enclosing a summary of Hailey Ordinance No. 1137 which amended the subdivision appeal process to establish a reconsideration procedure consistent with a new Idaho law.

Ned

<u>FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS</u>		Caselle # _____
Budget Line Item # _____		YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____		Estimated Completion Date: _____
Staff Contact: _____		Phone # _____
Comments: _____		

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

___ City Attorney	___ Clerk / Finance Director	___ Engineer	___ Building
___ Library	___ Planning	___ Fire Dept.	_____
___ Safety Committee	___ P & Z Commission	___ Police	_____
___ Streets	___ Public Works, Parks	___ Mayor	_____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Make a motion to approve the summary of Hailey Ordinance No. 1137.

FOLLOW-UP REMARKS:

## SUMMARY OF HAILEY ORDINANCE NO. 1137

The following is a summary of the principal provisions of Ordinance No. 1137 of the City of Hailey, Idaho, duly passed and adopted November 4, 2013, by the City Council and Mayor of the City of Hailey:

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S SUBDIVISION ORDINANCE, ORDINANCE NO. 821, BY AMENDING SECTION 2.6 TO REQUIRE RECONSIDERATION FOR ALLEGED FAILURE TO IDENTIFY COMPLIANCE OR NONCOMPLIANCE WITH EXPRESS APPROVAL STANDARDS OR EXPLAIN COMPLIANCE OR NONCOMPLIANCE WITH DECISION CRITERIA; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

Hailey Ordinance No. 1137 amends Hailey's Subdivision Ordinance No. 821, as follows:

**Section 1** amends Section 2.6 of the Hailey Subdivision Ordinance No. 821 to provide that a) failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria or standards shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of the same, on appeal, b) an applicant or affected person who seeks judicial review of a final decision by the Administrator, Hearing Examiner, Commission or Council must first seek reconsideration of the decision within fourteen (14) days to the person or body with authority to make a final decision, c) a request for reconsideration must allege and identify specific deficiencies in the decision, d) upon reconsideration, the decision may be affirmed, reversed or modified by a written decision within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied, and e) the time to file an appeal or to seek judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

**Section 2** provides for a severability clause.

**Section 3** provides for a repealer clause.

**Section 4** provides for an effective date of the ordinance.

The full text of Ordinance No. 1137 is available at Hailey City Hall at 115 South Main Street, Suite H, Hailey, Idaho 83333 and will be provided to any citizen upon request during regular business hours.

### CERTIFICATION OF CITY ATTORNEY

I, the undersigned Attorney at Law, as attorney for the City of Hailey, Idaho, hereby certify that I have read the foregoing summary of Ordinance No. 1137 of the City of Hailey, that I have compared it to the full text of Ordinance No. 1137, and that in my opinion, the above

summary is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated this 4<sup>th</sup> day of November, 2013.

---

Ned Williamson, Hailey City Attorney

Publish: Idaho Mountain Express, November \_\_, 2013

